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NO. 84-

IN THE

Supreme Court of the United States

October Term, 1984

The National Association for the Advancement of Colored People, Inc., through its South Carolina State Conference of Branches, and William F. Gibson, its President, Adell Thompson Adams, Carol Camellia Singletary, Rev. George R. Couser, Robert S. Logan, Madie Robinson, Frank B. Washington, Nelson Rivers, and S.T. Peden,

Appellants,

vs.

The State of South Carolina, Ex. Rel. Michael Roland Daniel, Lieutenant Governor of the State of South Carolina and as President and Presiding Officer of the Senate, Marshall Williams, Chairman of the Senate Judiciary Committee, Raymon Schwartz, Jr., Speaker of the House, Robert J. Sheheen, Chairman of the House Judiciary Committee, and James B. Ellisor, Executive Director of the South Carolina Election Commission; Joe Wilder; and, Dr. George G. Graham, as Chairman of the Republican Party of South Carolina, H. Sam Stilwell, and W. Richard Lee, individually and as representative of a class of persons who seek to vote and hold the office of State Senator in the State of South Carolina.

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED FOR REVIEW

Whether the opinion of the three judge court adopting an interim court ordered reapportionment plan for the South Carolina Senate, but which was never implemented, should be vacated and remanded with directions to dismiss as moot because of the subsequent enactment by the state, preclearance by the Attorney General and implementation of a permanent legislative senate reapportionment plan?

TABLE OF CONTENTS

	Page
Table of Authorities	iii
Opinions Below	1
Jurisdiction of the Court.	1
Constitutional Provision Involved	2
Statement of the Case.	3
The Questions Presented Are Substantial.	14
Conclusion	19
Appendix	
a. Opinion of the United States District Court for the District of South Carolina, July 31, 1984.....	1a
b. Opinion of the United States District Court for the District of South Carolina, August 13, 1984.	53a
c. Notice of Appeal.....	63a

TABLE OF AUTHORITIES

Cases	Pages
Chicago Board Options Exchange, Inc. v. Board of Trade, ___U.S. ___, 103 S. Ct. 434 (1982).....	16
DeFunnis v. Odegaard, 416 U.S. 312 (1974).....	15
Iron Arrow Honor Society v. Heckler. ___U.S.___, 104 S.Ct. 373 (1983).....	16
McDaniel v. Sanchez, 452 U.S. 130 (1981).....11,14	
NAACP v. South Carolina, A-86 (S. Ct.).....11,15	
South Carolina v. United States, A-37 (S. Ct.).....	7
South Carolina v. United States, Civ. No. 83-3626 (D. D.C.).....	4,7
Tulare Lake Canal Co. v. United States, ___U.S.___, 103 S. Ct. 13 (1983).....	16
United States v. Munsingwear, 340 U.S. 36 (1950).....16,17	
United States v. W. T. Grant Company, 345 U.S. 629 (1953)....	17
Upham v. Seamon, 456 U.S. 37 (1982).....	19
Winter v. Brooks, ___U.S.___, 103 S. Ct. 2077 (1983).....	19

Constitutional Provisions

U. S. Constitution, Article 3,
Section 2, Clause 1.....2,16

Statutory Provisions

28 U.S.C.:
§1253..... 2
§1331..... 1
§1342..... 1
§2284..... 1

42 U.S.C.:
§1973.....8,9,16
1973c.....passim
§1973j(f)..... 1
§1983..... 1

S. C. Laws:
Act No. 257.....passim
Act No. 1205..... 3

OPINIONS BELOW

The July 31, 1984 opinion of the three judge court for the United States District Court for the District of South Carolina adopting an interim reapportionment plan for the South Carolina Senate is unreported and is appended hereto at 1a.

The August 13, 1984 opinion of the three judge court vacating a portion of the July 31, 1984 opinion is unreported and is appended hereto at 53a.

JURISDICTION OF THE COURT

This is an appeal from a decision of a three judge court convened pursuant to 28 U.S.C. §§1331, 1343 and 2284, 42 U.S.C. §1983 and the Voting Rights Act of 1965, 42 U.S.C. §§1973c and 1973j(f).

The decree sought to be reviewed was entered on July 31, 1984. The no-

tice of appeal was filed in the United States District Court for the District of South Carolina on August 3, 1984. A copy of the notice of appeal is appended hereto at 64a.

Jurisdiction of this appeal is conferred on this Court by 28 U.S.C. §1253 and 42 U.S.C. §1973c.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Article 3, Section 2, Clause 1:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the

same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

On November 15, 1983 the General Assembly of South Carolina enacted Act No. 257 reapportioning the state Senat into 46 single member districts.[1] Since South Carolina is covered by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, the state commenced an action in the District Court for the

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1. Prior to enactment of Act No. 257, the Senate was apportioned into 16 districts, 13 of which had between two and five numbered seats, in accordance with the provisions of Act No. 1205 of 1972. Based upon the 1980 Census, Act No. 1205 contained a total deviation among districts of 54.33%, a deviation which the parties to this law suit conceded, and which the three judge court found, was in violation of the one person-one vote principle of the Fourteenth Amendment. 10a.

District of Columbia on December 6, 1983 seeking a declaratory judgment that Act No. 257 had neither the purpose nor the effect of discriminating on the basis of race or color. South Carolina v. United States, Civ. No. 83-3626 (D. D.C.).[2] As a result of litigation delays, trial on the merits was not scheduled until October 22, 1984. 16a.

On June 13, 1984, Appellee Graham, as Chairman of the Republican Party of South Carolina, and two others representing a class of persons seeking to vote and hold office, filed this suit against Appellee state officials. They alleged that because of the October trial date in South Carolina v. United

2. Appellants, who are the South Carolina State Conference of Branches NAACP, and certain of its officers and members, sought and were granted leave to intervene as party defendants.

States, supra, even if a decision favorable to the state "is reached immediately after the hearing, there will not be time for primaries and/or elections during the year 1984." They requested the three judge district court to fashion senatorial districts and insure that elections be held at the regularly scheduled time.

The various state officials filed their answers and requested the court, inter alia, to implement Act No. 257, or a plan incorporating the legislative apportionment policies of the South Carolina General Assembly contained in Act No. 257, without preclearance under

Section 5. 17a.[3] Appellants intervened as plaintiffs for the purpose of enforcing the Voting Rights Act of 1965 and insuring that no reapportionment plan be implemented by the state which incorporated the legislative policy choices of of the South Carolina General Assembly

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3. The state had earlier attempted to implement Act No. 257, despite the pendency of South Carolina v. United States, supra, by allowing and requiring candidate filing. These attempts, however, were enjoined by the District of Columbia court on April 26, 1984 in an order which provided that the state and its agents "shall neither require nor permit any other or further action on their part to be taken in connection with state senatorial elections to be conducted in accordance with Act 257 until Act 257 has been finally precleared pursuant to Section 5 of the Voting Rights Act." 15-6a. The Attorney General in pleadings filed in the District of Columbia court indicated that 15 of the districts contained in Act No. 257, numbers 17, 19, 20, 21, 22, 30, 31, 32, 39, 40, 41, 42, 43, 44 and 45, were objectionable under Section 5. 18a.

without preclearance under Section 5.[4]

Trial on the merits in this case was conducted by the three judge court on July 26, 27 and 30, 1984. The court ruled initially that it had jurisdiction and that it intended to implement a court ordered reapportionment for the senate so that the general elections could be held as scheduled in November, 1984. The parties were given an oppor-

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4. In view of the request by state officials that the South Carolina court implement without preclearance Act No. 257, or a plan incorporating state legislative policies, the United States filed a motion for further injunctive relief in South Carolina v. United States, supra. On July 18, 1984, the District of Columbia court granted the motion and enjoined the state from "any and all efforts to have Act 257 ordered as an interim plan, including recognition of any of the individual districts which are at issue in this litigation and which the Attorney General indicated he had objections to." 18a. The state sought a stay which was denied by this Court on July 20, 1984. South Carolina v. United States, A-37 (July 20, 1984, Justice White).

tunity to present proposed redistricting plans.[5]

On the last day of trial, the court indicated it would hear evidence whether any plan it might adopt violated Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973.[6] The court refused, however, to allow Appellants any discovery on the issue of possible Section 2 violations and it refused to grant Appel-

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5. The Republican Party presented a plan; Appellants presented two plans; Appellees Daniels, Dennis and Williams presented a plan; and, Appellee Sheheen presented two plans.

6. Section 2 provides in relevant part: "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section."

lants a Section 2 hearing on the specific plan it would actually adopt. Trial Transcript, Monday, July 30, 1984, pp. 33-9.

On July 31, 1984, the court issued an order adopting a plan, without revision and in its entirety, prepared by Appellee Sheheen, the Chairman of the South Carolina House Judiciary Committee.[7] The plan, known as the Sheheen 1.98% plan, contained a total deviation among districts of less than 2% and consisted of all single member districts. The Sheheen 1.98% plan was a revision of the plan proposed by Appellees Daniel, Dennis and Williams designed to reduce the population variance

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7. Appellee Sheheen was assisted in preparing the plan by counsel for the South Carolina House Judiciary Committee and the state's chief reapportionment demographer.

among districts to a de minimus level and incorporated "the basic state policy considerations for reapportioning the South Carolina Senate." 23a.[8]

As Appellee Sheheen conceded, the 1.98% plan did not address or attempt to cure any of the objections of the Attorney General to the 15 disputed districts contained in Act No. 257. Trial Transcript, Friday, July 27, 1984, pp. 196-97.

In its July 31, 1984 order, the three judge court ruled that the Sheheen 1.98% plan was not a legislative but was a court ordered plan exempt from the preclearance requirements of Section

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8. A major state policy consideration was protection of incumbents - all but one of whom are white. This was accomplished by minimizing the number of senators placed in the same districts and by maintaining "existing constituent consistency." 37-8a.

5. 35-6a.[9]

Appellants filed their notice of appeal on August 3, 1984, and sought an injunction pending appeal, which was denied. Appellants then filed an application for an injunction pending appeal from this Court "against further use of the court ordered reapportionment for the South Carolina Senate implemented by the lower court in its July 31, 1984 order absent preclearance under Section 5." NAACP v. South Carolina, A-86.

On August 9, 1984, the South Carolina General Assembly enacted a second senate reapportionment (R. 626 of 1984)

9. Although the order is somewhat cryptic on the point, the court apparently believed that McDaniel v. Sanchez, 452 U.S. 130 (1981), which held that court ordered plans reflecting legislative policy choices are subject to Section 5 preclearance, was not applicable to "interim" as opposed to "permanent" court ordered plans.

which was submitted to and precleared by the Attorney General pursuant to Section 5 on August 10, 1984. The state then moved the three judge court to vacate so much of its July 31st order as provided for the scheduling and holding of elections for the Senate under the court's reapportionment plan.[10]

On August 13, 1984, the three judge court vacated so much - but only so much - of its July 31, 1984 order as "directed the implementation of the 'Sheheen 1.98% Plan' for interim senatorial elections in South Carolina, on the schedule as fixed therein..., so

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10. The state was of the opinion that if the motion was granted, "it will moot this [Appellants'] appeal and petition [for a stay pending appeal]," since Appellants would have the relief they seek from the Supreme Court, i.e. "no elections will be held under the Sheheen 1.98% plan adopted by the Court." Memorandum in Support of Motion to Amend Order in Part and Vacate in Part, p. 6.

as to allow the State of South Carolina to proceed to forthwith implement the legislatively adopted and precleared reapportionment plan." 56a. The court also adopted a time table for elections calling for the primaries to be held on October 2, 1984.[11]

Following entry of the August 13th order, Appellants moved this Court for permission to withdraw on mootness grounds their application for an injunction pending appeal in view of the fact that the unprecleared Sheheen 1.98% plan, whose use Appellants sought to enjoin, had been vacated. Permission to withdraw was granted.

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11. Appellants filed a second notice of appeal from so much of the August 13, 1984 order as adopted a time table for elections. The issues involved in that appeal, however, are not involved in this appeal and are not before this Court.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Appellants seek an order from this Court noting probable jurisdiction, vacating the July 31, 1984 order of the three judge court and remanding with directions to dismiss such order in its entirety as moot.

Appellants appealed the July 31, 1984 order of the three judge court because it ordered into effect without preclearance under Section 5 of the Voting Rights Act a reapportionment plan for the South Carolina Senate (the Sheheen 1.98% plan), despite the fact that the plan admittedly incorporated the policy choices of the state legislature. The three judge court's ruling flatly violated McDaniel v. Sanchez, 452 U.S. 130, 153 (1981), which held that Section 5 "requires that whenever a covered

jurisdiction submits a proposal reflecting the policy choices of the elected representatives of the people - no matter what constraints have limited the choices available to them - the preclearance requirement of the Voting rights Act is applicable."

Once the Sheheen plan was vacated by the order of the three judge court on August 13, 1984, however, Appellants' appeal became moot.[12] DeFunis v. Odegaard, 416 U.S. 312 (1974)(an appeal becomes moot when intervening acts destroy the interest of a party to the adjudication, thereby depriving the

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12. The state concedes as much. See supra, p.12, n.10. Also see letter from Rex. E. Lee, Solicitor General, to Alexander L. Stevas, Clerk of Court, August 14, 1984, expressing the opinion of the United States that the application for a stay of the July 31, 1984 order of the three judge court in NAACP v. South Carolina, No. A-86, "is moot and should be dismissed."

federal court of jurisdiction under U.S. Const., Art. III.).

Where an appeal has become moot, the standard federal practice is to vacate and remand with instructions to dismiss. United States v. Munsingwear, 340 U.S. 36, 39 n.2 (1950); Iron Arrow Honor Society v. Heckler, ___U.S.___, 104 S. Ct. 373, 374 (1983); Chicago Board Options Exchange, Inc. v. Board of Trade, ___U.S.___, 103 S. Ct. 434 (1982); Tulare Lake Canal Co. v. United States, ___U.S.___, 103 S. Ct. 713

(1983).[13] Such a procedure prevents a decision, unreviewable under Art. III because of mootness, from "spawning any legal consequences." United States v. Munsingwear, supra, 340 U.S. at 41.

Appellants' concern with the legal consequences of the unvacated, unreviewed portions of the lower court's order is not merely technical or inconsequential. Although the trial court apparently contemplated that it would vacate its July 31, 1984 order in its entirety in the event the legis-

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13. This is not a case involving an exception to the rule where the complained of activity is reasonably capable of repetition since the legislature has enacted, precleared and implemented a permanent reapportionment of the state senate. Cf. United States v. W. T. Grant Company, 345 U.S. 629, 663 (1953). In addition, the issue whether or not the new apportionment is constitutional or violates Section 2 of the Voting Rights Act has not been presented to any court and is not involved in this appeal or this litigation.

lature enacted and precleared a permanent senate reapportionment plan,[14] the state requested the court to vacate only that portion of the order "which provides for the scheduling and holding of elections for the Senate of South Carolina under the Court's reapportionment plan." Motion to Amend Order in Part and Vacate in Part, p.1.

Since the district court granted the state's motion and vacated only part of its July 31, 1984 order, portions of the order remain and are capable of giving rise to important legal consequences, i.e. that an interim court

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14. The district court provided, for example, that in the event the state legislature passed and precleared a senatorial reapportionment plan by August 13, 1984, "any party to this litigation shall have leave to apply to this court for such relief as may be indicated, to include the vacating of this order." 51a-52a.

ordered reapportionment which incorporates legislative policy choices is not subject to Section 5 review; that such reapportionment need not address and cure the objections of the Attorney General to any prior legislative plan, Upham v. Seamon, 456 U.S. 37, 43 (1982) (in fashioning an interim reapportionment plan a court is obligated to "cure any constitutional or statutory defect."); and, that a court is not required to conduct a Section 2 hearing on the specific plan it adopts. Winter v. Brooks, ___U.S.___, 103 S. Ct. 2077 (1983).

CONCLUSION

This appeal, which presented substantial issues concerning the unprecleared court ordered reapportionment of the South Carolina Senate, has been

mooted by reason of the enactment and preclearance of a permanent legislative plan. As a consequence, the opportunity of this Court to review these issues has been removed. For this reason, probable jurisdiction should be noted and the opinion below should be vacated and remanded to the district court with directions to dismiss as moot.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Dr. George G. Graham, as Chairman of The Republican Party of South Carolina, H. Sam Stilwell, and W. Richard Lee, individually and as representative of a class of persons who seek to vote and hold the office of State Senator in the State of South Carolina,	)	Filed July 31, 1984
Plaintiffs,	)	
and,	)	CIVIL ACTION NO. 3:84-1430-15
The National Association for the Advancement of Colored People, Inc., through its South Carolina State Conference of Branches, and William F. Gibson, its President, Adell Thompson Adams, Carol Camellia Singletary, Rev. George R. Couser, Robert S. Logan, Madie Robinson, Frank B. Washington, Nelson Rivers, and S. T. Peden,	)	ORDER
Plaintiff-Intervenors,	)	

vs.

The State of South Carolina, Ex. Rel. Michael Roland Daniel, Lieutenant Governor of the State of South Carolina and as President and Presiding Officer of the Senate, Rembert Dennis, President Pro Tempore of the Senate, Marshall Williams, Chairman of the Senate Judiciary Committee, Raymon Schwartz, Jr., Speaker of the House, Robert J. Sheheen, Chairman of the House Judiciary committee, and James B. Ellisor, Executive Director of the South Carolina Election Commission,

Defendants,

and,

Joe Wilder,

Defendant-Intervenor.

STATEMENT OF THE CASE

On June 13, 1984, the "Plaintiffs," Dr. George Graham, Chairman of the Republican Party of South Carolina, and H. Sam Stilwell and W. Richard Lee, individually and as representatives of a class of citizens who seek to vote and hold the office of state senator in the South Carolina Senate, filed this action alleging that the South Carolina General Assembly had enacted a redistricting plan for the South Carolina Senate, which plan constituted a change in voting procedure subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended [42 U.S.C. 1973c], and that a trial before the United States District Court for the District of Columbia to determine whether preclearance should be granted was scheduled for October 22,

1984. Plaintiffs further alleged that due to the proximity of the trial date to the scheduled general election on November 6, 1984, no elections for South Carolina State Senate will be held in 1984 and the present incumbents will continue in office in violation of the one man, one vote principles of the United States Constitution. Named as defendants were the Governor of the State of South Carolina, Richard W. Riley, Michael Roland Daniel, Lieutenant Governor of the State of South Carolina and as President and Presiding Officer of the Senate, Rembert Dennis, President Pro Tempore of the Senate, Marshall Williams, Chairman of the Senate Judiciary Committee, Raymon Schwartz, Jr., Speaker of the House, Robert J. Sheheen, Chairman of the House Judiciary Committee and James B. Ellisor, Executive

Director of the South Carolina Election Commission. The Plaintiffs ask that the Court fashion senatorial districts for the State of South Carolina that are not in violation of the law and provide an election schedule for the nomination of senatorial candidates so that the candidates may be placed on the ballot for the general election to be held on November 6, 1984.

On June 14, 1984, an amended summons was served upon the defendants. All defendants answered on or before July 5, 1984, and, subject to certain jurisdictional challenges, requested that interim elections for the South Carolina Senate be ordered.[1] By consent

1. Defendants Daniel, Dennis and Williams asserted that this three-judge Court lacked subject matter jurisdiction, and these defendants, joined by defendants Schwartz and Ellisor, asserted that the south Carolina Democratic

order entered on July 16, 1984, defendant Riley was dismissed from this suit. On July 11, 1984 Joe Wilder moved to intervene as a party defendant. On July 12, 1984, The National Association for the Advancement of Colored People, Inc., through its South Carolina State Conference of Branches and William F. Gibson, its President, Adell Thompson Adams, Carol Camellia Singletary, Rev. George R. Couser, Robert S. Logan, Madie Robinson, Frank B. Washington, Nelson Rivers and S. T. Peden moved to intervene as parties-plaintiffs (hereinafter

party was an indispensable party to this litigation in that it conducts primary elections in South Carolina. There are four political parties certified to the Secretary of State in South Carolina, but inasmuch as political parties in South Carolina are mere instrumentalities of the State of South Carolina for conducting primary elections pursuant to State law, none are considered indispensable parties to this litigation. Rule 19, Fed.R.Civ.Proc.

"NAACP Plaintiffs-Intervenors"). Without objection, by order entered July 18, 1984, both petitions to intervene were granted and both were directed to comply with the briefing schedule as previously fixed by the court in its letter of July 3, 1984.

This case was tried on July 26, 27 and 30, 1984, in Columbia, South Carolina, before this three-judge court.

JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343 and 2284, 42 U.S.C. §1983, and the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973 et seq. As required by 42 U.S.C. §1973c, a three-judge court has been properly convened pursuant to 28 U.S.C. §2284.

PROCEDURAL BACKGROUND

Effective for the 1972 elections, the State of South Carolina was divided into 16 mostly multimember senatorial districts from which 46 state senators were to be elected. Act 1205, Acts and Joint Resolutions of South Carolina, 1972. While no county lines were cut by Act 1205, 13 of the 16 districts were multimember, with each district having between two and five numbered seats. There were three districts containing only one senate seat. The 46 current members of the South Carolina Senate were elected and are incumbent office holders pursuant to Act 1205, which, according to the 1970 census, has a total variance between districts of 9.93%. Act 1205 was submitted to the Attorney General of the United States for preclearance pursuant to the Voting

Rights Act of 1965, and no objection thereto having been noticed within 60 days, thereby became legally enforceable under Section 5.[2] 42 U.S.C. §1973c. Morris v. Gressette, 432 U.S. 491 (1977).

State Senators are elected for four-year terms in South Carolina, and pursuant to Article III, Section 10 of the Constitution of South Carolina, the terms of office of the members of the Senate begin on Monday following the general election in which they are elected. For this election year 1984, assuming that general elections are held on schedule on November 6, 1984, the terms of all 46 incumbent senators will expire on Monday, November 12, 1984.

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2. There is no dispute that South Carolina is a covered jurisdiction under the Voting Rights Act. 28 C.F.R. §51.4; Appendix.

Without 1984 senatorial elections, all 46 incumbent senators will continue in office until their respective successors are duly elected and qualified, even though the districts from which they are elected are badly malapportioned.

According to the 1980 official census, South Carolina has a total population of 3,121,820, of which 948,623 or 30.38685% are black. Based on this 1980 census, Act 1205 has a total variance of 54.33%, and it is undisputed that the 16 multimember senatorial districts established by Act 1205 are impermissibly malapportioned and future senatorial elections under Act 1205 would most assuredly violate the one man, one vote principle of the Equal Protection Clause of the Fourteenth Amendment. Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); Terrazas v. Clem-

ents, 537 F.Supp. 514 (N.D. Tex. 1982).

In recognition of this disparity, the South Carolina General Assembly in November 1983[3] passed Act 257 for purposes of apportioning the State into 46 single member senatorial districts. Based on South Carolina's total population of 3,121,820, the ideal single member district under such a plan providing for 46 senatorial districts would contain a population of 67,866 persons, with variance from the mean of 67,866 expressed in percentage points representing 678 for each point plus or minus 678 persons.

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3. It has never been made clear to this court why it took the South Carolina General Assembly (House and Senate) until November 1983 to pass such legislation when the 1980 census figures were available in the spring of 1981. Had a more reasonably expeditious course of action been followed, the necessity for the present litigation could in all probability have been avoided.

As a covered jurisdiction under the Voting Rights Act, the State of South Carolina chose to file suit in the District Court for the District of Columbia, 42 U.S.C. §1973c, in order to obtain preclearance for the implementation of Act 257, State of South Carolina v. United States of America, et al., Civil Action No. 83-3626, in the District Court for the District of Columbia (hereinafter "C/A 83-3626, D.C. D.C."). Asserting that Act 257 provided for reapportionment of the South Carolina Senate in order to conform to the one man, one vote requirement of Reynolds v. Sims, supra, on December 6, 1983, the State of South Carolina filed its Section 5, 42 U.S.C. Section 1973c, declaratory judgment action (C/A 83-3626, D.C. D.C.) seeking preclearance of the Senate reapportionment plan encom-

passed within Act 257. Pursuant to its petition, the NAACP and certain named individuals were granted leave to intervene by order of January 24, 1984. In preliminary considerations, the District Court for the District of Columbia indicated its judicial intentions "to do everything possible to enable the [primary] election to occur on Schedule" at June 12, 1984. Tr. at p. 27, Status Conference, January 24, 1984. (See Section 7-13-40, S.C. Code, Ann., 1976, as amended).

In order to provide party candidates ample time to campaign after the anticipated prompt preclearance of Act 257, the South Carolina General Assembly passed legislation providing for a delay of Senate primaries only until July 24, 1984, which legislation was approved by the Governor on March 8, 1984 (R. 321).

This legislation was submitted to the Attorney General for preclearance, and on March 20, 1984, the Attorney General interposed an objection to this (R. 321) legislation, including the postponement of the Senate primaries to July 24, 1984.[4] While awaiting the preclearance of Act 257 in C/A 83-3626, D.C.D.C., the State of South Carolina proceeded to open the Senate candidate qualification process between March 16 and March 30, 1984, requiring political parties intending to hold primaries to accept candidacy notices (filings) for the State Senate, the electoral districts in which the candidates would stand for election being defined by Act 257's

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4. While R. 321 was submitted to the Attorney General for preclearance, 42 U.S.C. §1973c, it is noted that preclearance of Act 257 was sought through the declaratory judgment action filed in November 1983. (C/A 83-3626, D.C.D.C.).

redistricting plan. Challenging this as "an implementation of Act 257" without preclearance, the United States and the NAACP, on respective motions, obtained an injunction from the District Court for the District of Columbia on April 26, 1984, providing:

> That the candidate qualification filings heretofore required and permitted by the State of South Carolina between March 16 - 30, 1984, and the act of its general assembly postponing the state senatorial primary elections from June 12, 1984, to July 24, 1984, are declared null, void, and of no effect,and the State of South Carolina, its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with it, are ordered and directed to accord them no legal force and effect until, unless, and except as may hereafter be otherwise determined by this Court; and it is
>
> FURTHER ORDERED, ADJUDGED, and DECREED, that the State of South Carolina, its officers, agents, servants, employees, and attorneys, and all others in active concert or participation with it, shall neither require nor permit any other or further action on

their part to be taken in connection with state senatorial elections to be conducted in accordance with Act 257 until Act 257 has been finally precleared pursuant to Section 5 of the Voting Rights Act.[5]

A hearing on the merits in C/A 83-3626 D.C.D.C. has been delayed until October 22, 1984, thereby eliminating the possibility for senatorial elections in South Carolina in 1984. In light of this circumstance, the Plaintiffs filed this action on June 13, 1984. Prior to the time for answering having expired, this court set a briefing schedule (which was subsequently extended to the intervenors) and invited all parties to submit proposed interim plans for the court's consideration. In their answer, defendants Daniel, Dennis and Williams,

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5. Memorandum and Order; and Order, April 26, 1984, C/A 83-3626, D.C.D.C.

while objecting to subject matter jurisdiction in this court and praying for a denial of Plaintiffs' requested relief, in the alternative prayed that this court "enter an order providing interim elections for the South Carolina Senate pursuant to Act 257 of 1983 or a plan incorporating the legislative apportionment policies of the South Carolina General Assembly." Apprehensive[6] that

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6. In its motion for further injunctive relief in C/A 83-3626 D.C.D.C., the United States says that it suspects the litigation before this court is not not altogether adversary. "It [U.S. Justice Department] foresees such an 'interim' plan becoming a fait accompli by a decree in South Carolina which would govern this [1984] year's quadrennial state senatorial elections and, thus, determine the composition of the State's Senate for the next four years, rendering any decision by this court [D.C.D.C.], following trial in October [1984], of academic interest only until 1988." P. 4, Memorandum and Order filed July 18, 1984, C/A 83-3626 D.C.D.C. After three days of trial, this court has no hesitancy in certifying that this is and was an adversay proceeding.

such alternative relief prayed for by these defendants was at attempted "end run" around the Section 5 preclearance requirements of the Voting Rights Act, the United States in C/A 83-3626, D.C.D.C., sought and obtained further injunctive relief as follows:

> 1. The State of South Carolina, its officers, agents, servants, employees, and attorneys and all others in active concert or participation with it, shall cease and refrain from any and all efforts to have Act 257 ordered as an interim plan, including recognition of any of the individual districts which are at issue in this litigation, namely, districts 17, 19, 20, 21, 22, 30, 31, 32, 39, 40, 41, 42, 43, 44, and 45.
>
> 2. The State of South Carolina, its officers, agents, servants, employees, and attorneys and all others in active concert or participation with it are enjoined from conducting elections pursuant to an election plan which contains any of the disputed districts in this litigation unless and until those districts have been precleared pursuant to the requirements of Section 5, 42 U.S.C. §1973c.

3. Counsel for the State of South Carolina shall provide a copy of this Order to the court in the Graham case.[7]

In response to this court's invitation for interested parties to submit proposed interim plans, the Plaintiffs submitted a plan containing a total variance of 9.98%, the NAACP Plaintiffs-Intervenors submitted a plan containing a total variance of 9.97%; the defendant Sheheen, in his official capacity submitted a plan containing a total variance of 3.89%; and the defendants Daniel, Dennis and Williams, adhering to the restraints imposed by the orders[8] in C/A 83-3626, D.C.D.C., submitted a new plan different from Act 257 and contain-

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7. Memorandum and Order; and Order, filed July 16, 1984, C/A 83-3626, D.C.D.C.

8. Notes 5, 6 and 7 supra.

ing a total variance fo 3.90%.[9] The defendants Schwartz, Ellisor and Wilder, while admitting that it will be beneficial to the citizens of South Carolina for senatorial elections to be held in 1984, offered no plan for the court's consideration, the defendant Wilder simply urging this court to adopt an interim plan which maintains the "rural integrity" of his resident district 39, as it is proposed in Act 257. In summary of their respective positions, the Plantiffs and defendants Sheheen and Wilder urge the court to fashion an interim plan in time for senatorial elections in 1984; the NAACP Plaintiffs-Intervenors and the defendants Daniel,

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9. This Sheheen plan was a minor revision of the plan offered by defendants Daniel, Dennis and Williams with modifications only to proposed senatorial districts 14, 15, 17, and 18.

Dennis and Williams oppose this court fashioning an interim plan, but as an alternative offer their respective plans for this court's consideration; and the defendants Schwartz and Ellisor take no position on the issue of whether or not this court should fashion an interim plan.

During the second day of testimony before this court, defendant Sheheen, in addressing the plan he proposed in response to this court's invitation, testified that this plan, containing a total variance of 3.89%, as one which represents an application of the policies more consonant with the intent of the South Carolina House. Having been sued in his official capacity as Chairman of the [South Carolina] House Judiciary Committee, the defendant Sheheen testified he was constrained to offer

such a plan in response to this court's invitation to submit a proposed plan. In further response to this court's inquiry for achieving "the goal of population equality with little more than de minimis variation" between senatorial districts,[10] defendant Sheheen offered as an alternative to the 3.89% plan a plan which he developed in his individual capacity without having been subjected to legislative consideration by either the House or Senate of the South Carolina General Assembly. This alternate plan proposed by defendant Sheheen is a major revision of the plan proposed by defendants Daniel, Dennis and Williams, and has the desired effect of

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10. See Chapman v. Meier, 420 U.S. 1, 27 95 S.Ct. 751, 766, 42 L.Ed.2d 766 (1975), and McDaniel v. Sanchez, 452 U.S. 130, 138, 101 S.Ct. 2224, 2230, 68 L.Ed.2d 724 (1981).

reducing the total population variance between districts from 3.90% to 1.98%, without violating the basic state policy considerations for reapportioning the South Carolina Senate.[11] The court was impressed with Mr. Sheheen's unique knowledge and expertise in the area of reapportionment and demographic makeup of South Carolina. He had successfully guided the House reapportionment through the General Assembly and had presented the Congressional reapportionment plan adopted by the three-judge court in NAACP v. Riley, 533 F.Supp. 1178 (D.S.C. 1982). Furthermore, in presenting his 1.98% individual plan as an alternative

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11. The Supreme Court has stated that district courts redrawing state legislative districts must defer to state policy "whenever adherence to state policy does not detract from the requirements of the Federal Constitution . . ." White v. Weiser, 412 U.S. 783, 795 (1973).

to the 3.89% plan, which represented the general consensus of the House, Mr. Sheheen, has no personal interest to further in this litigation since he has been nominated (Democratic) without any opposition for reelection to his current House seat.

After all plans had been submitted and explained, the court recessed for the weekend and advised the parties that it would hear objections to any plan on Monday, and that if the parties desired, they could submit amended plans on July 30th. The NAACP submitted its revision of the alternate Sheheen plan. This amended plan had a total variance of 1.99%, but it cut many more county lines than any other proposal and some counties were partitioned among as many as six senatorial districts. There was one additional majority black district in

the plan, but the black percentages in the other district were not substantially changed.

To paraphase the thoughts of another federal court[12] which found itself faced with a task very similar to the one before this court, we look forward to the day when the South Carolina General Assembly will again take up its mantle of responsibility and thereby relieve the United States District Courts of the necessity of intervening in their affairs. Until that day arrives, the responsibility for this intervention must rest with those who through their ineptitude and public disservice have forced it. That this litigation is the consequence of inaction by the South Carolina General As-

12. Dent v. Duncan, 360 F.2d 333 (5th Cir. 1966).

sembly is readily apparent when considering that the 1980 official census figures were available in the spring of 1981, yet it was not until November 1983 that Act 257 was adopted for reapportioning the State Senate, even in the face of a badly malapportioned (variance of 54.33%) Senate as then (1981-1983) and now constituted. For this court to speculate on the reasons for such inaction would serve no useful purpose. What is significant for this court's consideration is the effect of delaying State Senate elections beyond this election year 1984 in which quadrennial senatorial elections would normally be held. If this court does not act to fashion an interim plan and order senatorial elections in this 1984 year, it is quite obvious that no such elections will take place. The trial in C/A 83-

3626, D.C.D.C., is set for October 22, 1984, the next time all three judges of that court could sit together for an extended period of time. Even if that court should promptly grant preclearance to Act 257 under the Voting Rights Act, a premise which is far from certain, time would not permit senatorial elections in this year. Thus, unless this court exercises its discretion and orders an interim plan for elections for the South Carolina Senate and an accompanying election schedule, there will be no elections for the Senate in 1984. This court is of the opinion that Senate elections should be held unless the court is prohibited by law or reason from ordering an election plan and schedule. Clearly, there is no legal prohibition since it is within this court's discretion to order interim

elections for the Senate in 1984.

The discussion must now turn to the reasonability of holding elections in 1984. First, an examination will be made of some possible results if this court does not order elections. The resolution of C/A 83-3626, D.C.D.C., will occur at the trial scheduled to begin on October 22, 1984. Whether the District of Columbia Court preclears Act 257 or not, no elections could be held as early as February of 1985. There are, however, a number of disadvantages to holding elections then. They include lower voter turnout than at a general election, added expense to the State and the political parties, disruption of the General Assembly and holding primaries during the Thanksgiving-Christmas holiday season.

If the plan is not precleared, more

problems arise. This court is of the considered opinion that the District of Columbia Court has no authority beyond the decision to preclear or not. Allen v. State Board of Elections, 393 U.S. 544 (1969). They cannot order a plan into place. Therefore a decision not to preclear Act 257 would leave South Carolina with no Senate elections in 1984 and no remedy to the problem of Senate reapportionment in progress. It is important that elections for the Senate be held in 1984 and adoption of a plan and ordering of elections by this court is the only vehicle available to reach this goal.

Other problems will arise which will cause confusion and added expense if no plan is ordered. Either the terms of the members of the Senate come to an end in November and one of the three

branches of South Carolina's government is rendered ineffective; or the members of the Senate holdover and the one man, one vote requirement of the Federal Constitution is violated. In Terrazas v. Clements, 537 F.Supp. 514 (N.D. Tex. 1982), a three-judge court recognized the latter problem as justification for ordering an interim election plan. "If the . . . primaries are not, there will continue in office Senators and Representatives from many districts that . . . have become severely malapportioned under the one person, one vote principle of Reynolds v. Sims and its progency." Terrazas, supra, at 527.

Of further concern in this matter is the consequence of an appeal following the decision by the three-judge court in C/A 83-3626, D.C.D.C. The delays associated with any such appeal

could result in a constitutionally malapportioned Senate in South Carolina for several more, if not many more, years.

Also, Section 6 of Article III of the South Caorlina Constitution requires that Senators be elected every four years.

From the foregoing discussion one can see that nothing positive will come from a decision by this court not to exercise its discretion and order an interim plan for Senate elections. In fact, the least disruptive scenario, Senators holding over in constitutionally malapportioned districts, is the most offensive from a legal standpoint. Terrazas, supra. If, however, the court orders elections, a great deal of confusion and expense can be avoided.

Clothed with the discretionary power and authority to fashion an inter-

im plan and fix a schedule for senatorial elections this year, and with the necessity for the exercise of such discretion so pervasive and clear, this court will not shirk its responsibility, as unwelcomed an obligation as it is, but instead will proceed to fashion an interim plan and other senatorial elections this year.

LEGAL ISSUES

This court appreciates, and indeed the parties are in agreement, that legislative reapportionment is primarily the duty and responsibility of the South Carolina General Assembly, rather than this federal court. Reynolds v. Sims, 377 U.S. 533, 587, 84, S.Ct. 1362, 12 L.Ed.2d 506 (1964); Chapman v. Meier, 420 U.S. 1, 27, 95 S.Ct. 751, 766, 42 L.Ed.2d.766, (1975). While reapportion-

ment is a legislative task which the federal courts should make every effort not to preempt, judicial relief in the form of a court-ordered interim plan becomes appropriate when a legislature fails to reapportion itself in accordance with federal constitutional requisites in a timely manner after having been afforded a reasonable opportunity to do so. Wise v. Lipscomb, 437 U.S. at 540, 98 S.Ct. at 2497; Connor v. Finch, 431 U.S. at 415, 97 S.Ct. at 1834; Reynolds v. Sims, 377 U.S. at 586, 84 S.Ct. at 1394.

The State of South Carolina is precluded by Section 5 of the Voting rights Act, 42 U.S.C. §1973c, and the injunctions issued in C/A 83-3626, D.C.D.C.,[13] from implementing Act 257 so

13. See Notes 5, 6 and 7, supra.

long as it remains unprecleared.[14] See Allen v. State Board of Education, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969); Connor v. Waller, 421 U.S. 656, 95 S.Ct. 2003, 44 L.Ed.2d 486 (1975). With a total variance of just under 10%, we reach the independent determination that it would not be appropriate for this court to adopt Act 257 as an interim plan since we have another plan more nearly achieving de minimis popula-

14. The fact that the Department of Justice may not have technically entered objections to Act 257, inasmuch as Act 257 was not submitted to the Attorney General for preclearance, is not relevant to this court's decision. Upham v. Seamon, 456 U.S. 37, 102 S.Ct. 1518 (1982), reh'g denied, 456 U.S. 938, 102 S.Ct. 2001 (1982). As a practical matter it would be judicially impossible to fashion an interim plan conforming to the de minimis variation requirements of Chapman v. Meier, 420 U.S. 1, 27, 95, S.Ct. 751, 766, 42 L.Ed.2d 766, were this court to accept as a part of its interim plan the 31 proposed districts (Act 257) not "objected" to by the United States in C/A 83-3626, D.C.D.C.

tion variances which will allow us to order temporary reapportionment of the State's senatorial districts while adequately reconciling state political policy with federal statutory and constitutional standards. In rejecting Act 257, the court further rejects the argument of the NAACP Plaintiffs-Intervenors that any interim plan fashioned by this court, i.e., a judicial plan as opposed to a legislative plan, which takes into consideration the State's political policies must be precleared under Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. To the extend that McDaniel v. Sanchez, 452 U.S. 130, 101 S.Ct. 2224, 68 L.Ed.2d 724 (1981), is relied on by NAACP Plaintiffs-Intervenors, such reliance is misplaced in the context of this case. If NAACP Plaintiffs-Intervenors position were legally

correct, there would be no practical way for federal courts to ever adopt interim reapportionment plans considering the restraints of time which are always present in this type litigation. Jordan v. Winter, 541 F.Supp. 1135, 1141 (N.D. Miss. 1982). "We do not believe Congress intended our discretion to be so limited." Terrazas v. Clements, 537 F.Supp. 514, 540 (N.D. Tex. 1982). Indeed, the Supreme Court has made it clear that in fashioning an interim reapportionment plan a district court must adhere to the state's political policies except to the extent such policies are violative of either the Constitution or the Voting Rights Act. Upham v. Seamon, 456 U.S. 37, 102 S.Ct. 1518 (1982), reh'g denied, 456 U.S. 938, 102 S.Ct. 2001 (1982). By giving due deference to such state political policies, a

judicial plan fashioned in such manner is not transformed into a legislative plan subject to preclearance under the Voting Rights Act. Indeed, a district court errs if it brushes aside state apportionment policy without solid constitutional or equitable grounds for doing so. White v. Weiser, 412 U.S. 783, 796, 93 S.Ct. 2348, 2355, 37 L.Ed.2d 335 (1973); Whitcomb v. Chavis, 403 U.S. at 161, 91 S.Ct. at 1878 (1971); Connor v. Finch, 431 U.S. 407, 414, 97 S.Ct. 1828, 1833, 52 L.Ed.2d 465 (1977). As adduced at trial, the State's primary political policies reflected in the passage of Act 257, and in the offering of the Dennis, Daniel and Williams (3.90% variance) plan for this court's consideration, may be summarized as follows: (1) adherence to the one man, one vote requirement; (2)

creation of 46 single member districts; (3) the creation of nine majority black districts, that is senatorial districts in which the resident black population is in excess of 50%; (4) compliance with the anti-discrimination provision of the Fourteenth and Fifteenth Amendments to the Constitution and the Voting Rights Act; (5) maintenance of county (46) lines inviolate wherever possible; (6) maintaining existing constituent consistency; and (7) avoiding placing incumbent Senators in the same senatorial districts as reapportioned wherever possible.

While this court does not have jurisdiction to determine if a plan (interim or permanent) complies from a substantive standpoint with Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, Perkins v. Matthews, 400 U.S. 379, 91

S.Ct. 431, 27 L.Ed.2d 476 (1971), we are required in fashioning this interim plan to follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases. McDaniel v. Sanchez, 452 U.S. 130, 147, 101 S.Ct. 2224, 2235, 68 L.Ed.2d 724, 739 (1981). In other words, this court must attempt to devise a plan that has neither a racially discriminatory purpose nor such an effect. Beer v. United States, 425 U.S. 130, 96 S.Ct. 1357, 47 L.Ed. 2d 629 (1976); Perkins v. Matthews, 400 U.S. at 385, 91 S.Ct. at 435. While the absence of a discriminatory purpose or effect is essential, neither the Constitution nor the Voting Rights Act requires proportional representation. City of Mobile v. Bolden, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980; White v. Regester,

412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973). What is constitutionally required is that the State, and this court in fashioning its interim plan, deal fairly with the black citizens by avoiding any plan which has the purpose or effect of unnecessarily minimizing or fragmenting black voting strength. "No State or political subdivision is required to search for ways to maximize the number of black voting age population districts. Likewise, no racial group has a constitutional or statutory right to an apportionment structure designed to maximize its political strength." State of Mississippi v. United States, 490 F.Supp. 569, 582 (D.D.C. 1979) (three-judge court), aff'd mem., 444 U.S. 1050, 100 S.Ct. 994, 62 L.Ed.2d 739 (1980). What is mandated is that all citizens have an equal opportu-

nity to participate in a State's political processes.

In applying the above principles and in recognition that "unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multimember districts, and, as well, must ordinarily achieve the goal of population equality with little more than de minimis variation." Chapman v. Meier, 420 U.S. at 26-27, 95 S.Ct. at 765-66, this court in the exercise of its discretion does adopt as an interim redistricting plan the 1.98% alternate plan proposed by Mr. Sheheen in his individual capacity and at the invitation of this court (The "Sheheen 1.98% Plan"). This plan is in keeping with the state policies for senate reapportionment and meets the test of the constitutional and statutory

requirements discussed above.

Since we are concerned only with an interim plan to reapportion the South Carolina Senate, there is a question as to whether an analysis under §2 of the Voting Rights Act, 42 U.S.C. §1973[15] is

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15. §1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its member have less opportunity than

required. The 1982 amendment to the Act creates a "totality of circumstances" test to insure that the political processes leading to nomination or election in a state or a political subdivision is equally open to participation by members of a protected class (in this case black citizens) and that they have an equal opportunity with other members of the electorate to participate in the process and elect representatives of their choice.

We can take judicial notice that only in recent years has the political

other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

process in South Carolina been open to effective black participation. Until the early 1960s South Carolina was a one-party state and nomination in the Democratic Primary was tantamount to election, because there was no effective Repulican opposition. The Democratic Primary process was closed to blacks until Elmore v. Rice, 72 F.Supp. 516 (E.D. S.C. 1947) aff'd, 165 F.2d 387 (4th Cir. 1947) decided that the Democratic party could not be operated as a club, which could exclude black members, and that the Democratic Primary must be opened to allow participation by all qualified citizens regardless of race.

As late as 1963 South Carolina had in effect an anti-single shot voting law. See Boineau v. Thornton, 253 F.Supp. 175 (E.D. S.C. 1964).

All of these restrictions have been

ended and the political processes leading to the nomination and election to public office are equally open to minority races and minority parties. The South Carolina delegates to the recent Democratic National Convention were fifty percent female and forty-four percent black.

The court has considered all of the interim plans submitted and there was no contention by any of the parties that under any of the proposals there was not equal access to the nominating and election process. In each plan single member districts were used in place of the prior multi-member districts. Each plan contained at least nine districts with a majority black population. None of the parties or witnesses could agree upon a definition of a "black electable district" and what percent of a district

must be black voters to make it a "safe black district." Apparently such definitions are impossible because the attraction of various candidates and their appeal to individual voters cannot be factored into the formula.

Admitted into evidence is the report of the South Carolina Election Commission which clearly shows equality of participation by black citizens in South Carolina in the processes for nomination and election of candidates. This report demonstrates that the statewide average of black voting age population registered to vote exceeds the white percentage (71% black, 70% white). In thirteen counties, the percentage of black voting age population registered is greater than the percentage of white voting age population registered and in three counties the percentage of black

voting age population is identical to that of the percentage of white voting age population registered. In ten counties there are more black registered voters than white registered voters. Also the counties with the lowest percentage of registered voters are in the Piedmont section of the state where the population is predominately white.

In recent months there have been numerous voter registration efforts in South Carolina directed particularly at the registration of black voters in connection with the efforts of the Reverend Jesse Jackson to obtain the Democratic Presidential nomination. These registration drives are still in progress. Political candidates of all parties and for all offices seek and encourage voter support from all races.

The historical discrimination

against black voting in South Carolina does not have a continuing effect on the level of black political participation as measured by voter registration. Voter turn-out records shows similar degrees of participation by blacks.

The 1982 amendment to the Voting Rights Act does not provide that members of a protected class must be elected in numbers equal to their proportion in the population. It provides that the political processes leading to the nomination and election be equally open. The plan adopted by this court provides equal access to the political processes and an excellent opportunity for blacks to be elected in at least nine districts.

The Sheheen 1.98% Plan, as adopted by this court, is attached to and specifically made a part of this order. This temporary plan will remain in ef-

fect until such time as a valid senatorial reapportionment plan is duly adopted by the South Carolina General Assembly, precleared pursuant to the Voting Rights Act, and implemented accordingly.

In order to implemented this interim reapportionment plan and to conduct the November 6, 1984, senatorial election as orderly and timely as possible, the following election schedules as prescribed by the South Carolina Code of Laws 1976, as amended, must be modified as follows:

(a) Section 7-13-40: candidate filings are to commence at 12:01 p.m., August 13, 1984, and close at noon on August 15, 1984.

(b) Section 7-13-40: the primary election is to be held on September 4, 1984.

(c) Section 7-13-50: any run-off election is to be held on September 18, 1984.

(d) Section 7-17-560: any protest

is to be heard not later than noon Monday, September 24, 1984.

(e) Section 7-13-350: certification of candidates is set for October 1, 1984.

(f) Sections 7-15-330 and 7-15-420: absentee ballots may be requested from the county registration board for the county of the voter's residence promptly after the filing cut off date of August 15, 1984, and/or the certification date of October 1, 1984. Completed applications must be returned to the county registration board in person or by mail before 5:00 p.m. on the fourth day preceding the day of the election; provided however, that applications shall be accepted by the county board of registration until 5:00 p.m. on the day immediately preceding the election for those who appear in person and are qualified to vote absentee pursuant to §7-15-320(4) and (7). Absentee ballots, where possible, shall be mailed to any qualified elector requesting an application in sufficient time to be completed and returned to the county registration board in person or by mail before 5:00 p.m. on the date of the election. All valid absentee ballots which are received in compliance with this directive shall be counted in the election for which submitted.

Additionally, the State Election

Commission is hereby granted authority to print separate ballots for the state senatorial elections should it, in its discretion, so decide.

For the foregoing reasons and based on the cited authorities,

IT IS THEREFORE ORDERED that South Carolina State Senatorial elections be held in 1984 pursuant to the attached reapportionment plan, denominated the "Sheheen 1.98% Plan," and in accordance with the above outlined schedule; provided, however, that if, by noon on Monday, August 13, 1984, the South Carolina General Assembly passes a senatorial reapportionment plan, and has the same precleared pursuant to the Voting Rights Act of 1965, as amended, any party to this litigation shall have leave to apply to this court for such relief as may be indicated, to include

the vacating of this order so as to allow senatorial elections in 1984 to proceed under such legislatively adopted and precleared reapportionment plan.

IT IS SO ORDERED at Columbia, South Carolina, this 31st day of July, 1984.

s/ Robert F. Chapman
ROBERT F. CHAPMAN
UNITED STATES CIRCUIT JUDGE

s/ Falcon B. Hawkins
FALCON B. HAWKINS
UNITED STATES DISTRICT JUDGE

s/ Clyde H. Hamilton
CLYDE H. HAMILTON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Dr. George G. Graham, as Chairman of The Republican Party of South Carolina, H. Sam Stilwell, and W. Richard Lee, individually and as representative of a class of persons who seek to vote and hold the office of State Senator in the State of South Carolina,	FILED Aug. 13, 1984
Plaintiffs,	CIVIL ACTION NO. 3:84-1430-15
and,	
The National Association for the Advancement of Colored People, Inc., through its South Carolina State Conference of Branches, and William F. Gibson, its President, Adell Thompson Adams, Carol Camellia Singletary, Rev. George R. Couser, Robert S. Logan, Madie Robinson, Frank B. Washington, Nelson Rivers, and S. T. Peden,	ORDER
Plaintiff-Intervenors,	

vs.)
)
The State of South)
Carolina, Ex. Rel. Michael)
Roland Daniel, Lieutenant)
Governor of the State of)
South Carolina and as)
President and Presiding)
Officer of the Senate,)
Rembert Dennis, President)
Pro Tempore of the Senate,)
Marshall Williams, Chair-)
man of the Senate Judi-)
ciary Committee, Raymon)
Schwartz, Jr., Speaker of)
the House, Robert J.)
Sheheen, Chairman of the)
House Judiciary committee,)
and James B. Ellisor,)
Executive Director of the)
South Carolina Election)
Commission,)
)
Defendants,)
)
and,)
)
Joe Wilder,)
)
Defendant-Intervenor.)
)

Following the entry of this court's order on July 31, 1984, fashioning a judicial reapportionment plan, the South Carolina General Assembly, on August 8, 1984, adopted, and the Governor of South Carolina, on August 9, 1984, signed into law in South Carolina, a legislative reapportionment plan (R. 626 of 1984) dividing the State of South Carolina into 46-single-member senatorial districts. This legislatively adopted reapportionment plan has received expedited preclearance by the Attorney General of the United States, (Letter of Department of Justice, 10 August 1984, Court's Exhibit #1), 42 U.S.C. §1973c, and is now, with leave of this court, in a posture to be implemented by the State of South Carolina for purposes of holding State Senatorial elections in this 1984 year.

With deference to the well established maxim that legislative reapportionment is primarily the duty and responsibility of state legislatures, rather than the federal courts, Reynolds v. Sims, 377 U.S. 533, 587, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); Chapman v. Meier, 420 U.S. 1, 27, 95 S.Ct. 751, 766, 42 L.Ed.2d 766 (1975), this court does hereby vacate so much of its order, filed July 31, 1984, as directed that interim senatorial elections be held in South Carolina in 1984 pursuant to the "Sheheen 1.98% Plan," so as to permit the immediate implementation by the State of South Carolina of the permanent legislatively adopted (R. 626 of 1984) and precleared, 42 U.S.C. §1973c, reapportionment plan.

The court is aware that R. 626 has been precleared under Section 5 of the

Voting Rights Act as to the 46 senatorial districts it creates, but the United States Department of Justice has objected to the filing and to the primary dates contained in that Act. The attorneys for the defendants Daniel, Dennis and Williams have proposed substitute dates which have been submitted to the United States Department of Justice and the said Department of Justice has interposed no objection. See letter of August 13, 1984 (Court's Exhibit #2) and Paul F. Hancock, Assistant for Litigation of the Voting Rights Section of the Civil Rights Division of the United States Department of Justice, has represented to this court that if the court adopts the dates hereinafter set forth, the Department of Justice will immediately ratify its preclearance of said dates to be used in the 1984 South Caro-

lina Senatorial elections.

Therefore, that portion of this court's order of July 31, 1984, which provided for a schedule for Senatorial elections in 1984 (pp. 26-27) is hereby amended to conform to the following schedule:

(a) Section 7-13-40: candidate filings are to commence at Noon, August 14, 1984, and close at Noon, August 28, 1984;

(b) Section 7-13-40: the primary election is to be held on October 2, 1984;

(c) Section 7-17-560: any protest is to be heard not later than Noon, October 8, 1984;

(d) Section 7-13-50: any run-off election is to be held October 11, 1984;

(e) Section 7-17-560: any protest is to be heard not later than Noon,

October 16, 1984;

(f) Section 7-13-350: certification of candidates is set for Noon, October 18, 1984. Any petition candidate must file his petition not later than Noon, September 18, 1984, to allow sufficient time for the verification of the signatures;

(g) For the primary election of October 2, 1984, absentee ballots may be requested from the county registration board for the county of the voter's residence promptly after the filing cut off date of August 28, 1984, and may be requested by U.S. mail through September 27, 1984, and may be requested in person through October 1, 1984. Completed applications must be returned to the county registration board in person or by mail before 5:00 p.m. the day preceding the primary election. Absentee

ballots, where possible, shall be mailed to any qualified elector requesting an application in sufficient time to be completed and returned to the county registration board by mail before 7:00 p.m. on the date of the election. All valid absentee ballots which are received in compliance with this directive shall be counted in the election for which submitted; and

(h) Section 7-15-310 et seq.: absentee ballots may be requested from the county registration board for the county of the voter's residence promptly after the filing cut off date of August 28, 1984. Completed applications must be returned to the county registration board in person or by mail before 5:00 p.m., November 2, 1984, provided however, that applications shall be accepted by the county board of registra-

tion until 5:00 p.m. on the day immediately preceding the election for those who appear in person and are qualified to vote absentee pursuant to §7-15-320(4) and (7). Absentee ballots, where possible, shall be mailed to any qualified elector requesting an application in sufficient time to be completed and returned to the county registration board by mail before 7:00 p.m. on the date of the election. All valid absentee ballots which are received in compliance with this directive shall be counted in the election for which submitted;

The State Election Commission and the political parties are authorized to print separate ballots for the state senatorial elections and to utilize paper ballots for senatorial elections should they, in their discretion, so

decide.

The effect of this order is to vacate that portion of this court's order of July 31, 1984, which directed the implementation of the "Sheheen 1.98% Plan" for interim 1984 senatorial elections in South Carolina, on the schedule as fixed therein (pp. 26-27), so as to allow the State of South Carolina to proceed to forthwith implement the legislatively adopted (R. 626 of 1984) and precleared reapportionment plan, under which State senatorial elections are to be held in South Carolina in 1984, pursuant to and in accordance with the schedule hereinabove outlined and approved.

This court retains jurisdiction in this matter for purposes of entering such further orders or granting such further relief as this court may in its

discretion deem appropriate.

IT IS SO ORDERED at Columbia, South Carolina, at 3:00 p.m., this 13th day of August, 1984.

s/Robert F. Chapman
ROBERT F. CHAPMAN
UNITED STATES CIRCUIT JUDGE

s/Falcon B. Hawkins
FALCON B. HAWKINS
UNITED STATES DISTRICT JUDGE

s/Clyde H. Hamilton
CLYDE H. HAMILTON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Dr. George G. Graham, as Chairman of the Republican Party of South Carolina, H. Sam Stilwell, and W. Richard Lee, individually and as a representative of a class of persons who seek to vote and hold the office of State Senator in the State of South Carolina,	)	
Plaintiffs,	)	
and	)	Civil Action
The National Association for the Advancement of Colored Peopole, Inc., through its South Carolina State Conference of Branches, and William F. Gibson, its President, Adell Thompson Adams, Carol Camellia Singletary, Rev. George R. Couser, Robert S. Logan, Madie Robinson, Frank B. Washington, Nelson Rivers and S. T. Peden,	)	No. 3-84 1430-15
Plaintiff-Intervenors,	)	

v.)
)
The State of South Carolina,)
Ex. Rel. Michael Roland)
Daniel, Lieutenant Governor)
of the State of South Caro-)
lina and as Presiding Officer)
of the Senate, Rembert)
Dennis, President Pro Tempore)
of the Senate, Marshall)
Williams, Chairman of the)
Senate Judiciary Committee,)
Raymond Schwartz, Jr.,)
Speaker of the House, Robert)
J. Sheheen, Chairman of the)
House Judiciary Committee,)
and James B. Ellisor,)
Executive Dirtector of the)
South Carolina Election)
Commission,)
)
Defendants,)
)
and,)
)
Joe Wilder,)
)
Defendant-Intervenor.)

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Plaintiff-Intervenors above named hereby appeal to the Supreme Court of the United States from the order entered in

this action on July 31, 1984, ordering into effect a reapportionment plan for the South Carolina Senate.

This appeal is taken pursuant to 42 U.S.C. Section 1973c and 28 U.S.C. Section 1253.

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Columbia, South Carolina

August 3, 1984